

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

AMICA MUTUAL INSURANCE COMPANY, :
Plaintiff, :
 :
v. : CA 11-70 L
 :
WHOIS PRIVACY PROTECTION SERVICE, :
INC., INSURANCE-WEBSITE.COM, and :
DARRIN BAGNUOLO d/b/a DARBA ONLINE, :
DARBA DOMAINS and DARBA ENTERPRISES, :
INC.,¹ :
Defendants. :

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

Before the Court is a motion filed by Defendant Darrin Bagnuolo ("Defendant" or "Mr. Bagnuolo") to dismiss for lack of personal jurisdiction. See Darrin Bagnuolo's Motion to Dismiss Plaintiff's Complaint Based on (1) Improper Venue; (2) Lack of Personal Jurisdiction; (3) Insufficient Process; and (4) Insufficient Service of Process. Request [sic] to Alternatively Transfer this Matter to the District of Nev[a]da for Convenience of Parties, Witnesses and Interest of Justice (Docket ("Dkt.") #17) ("Motion to Dismiss" or "Motion"). Plaintiff Amica Mutual

¹ Plaintiff has clarified that Darba Enterprises, Inc., is not named in this action "as a separate defendant but is, instead, named as one of Mr. [Darrin] Bagnuolo's three fictitious name entities through which he is doing business." Reply Memorandum in Further Support of Plaintiff's Motion to Strike Non Party Darba Enterprises, Inc.'s Motion to Dismiss or, in the Alternative, to Transfer (Dkt. #25) at 2. On October 12, 2011, the Court entered an order reflecting the clarification. See Order Granting Motion to Strike and Ruling That Darba Enterprises, Inc., is not a Party (Dkt. #34).

Insurance Company ("Plaintiff" or "Amica") has filed an objection to the Motion. See Plaintiff's Objection to Darrin Bagnuolo's Motion to Dismiss or, in the Alternative, to Transfer (Dkt. #19). The Motion has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B).

Discussion

A hearing on the Motion was held on October 12, 2011. Thereafter, the Court ordered a period of jurisdictional discovery. See Order Granting Plaintiff's Request for Limited Jurisdictional Discovery (Dkt. #35) ("Order of 10/25/11"). As detailed more fully in the Memorandum and Order Granting Amica's Motion for Sanctions (Dkt. #49) ("M & O of 5/10/12"), Amica's attempt to obtain discovery from Mr. Bagnuolo was frustrated by his failure to respond to Amica's discovery requests. See M & O of 5/10/12 at 4-5. Amica then moved to compel his responses and also moved to extend the deadline for completion of jurisdictional discovery by forty-five days (through February 10, 2012).

Following a hearing on February 3, 2012, the Court issued an order granting Amica's motions. See Order Granting Amica's Motions to Compel and to Extend (Dkt. #43) ("Order of 2/3/12"). Mr. Bagnuolo failed to comply with the Order of 2/3/12, and Amica filed a motion for sanctions. See Amica Mutual Insurance Company's Motion for Sanctions against Defendant Darrin Bagnuolo, d/b/a Darba

Online, Darba Domains and Darba Enterprises, Inc. (Dkt. #44) ("Motion for Sanctions"). A hearing on the Motion for Sanctions was held on April 24, 2012. On May 10, 2012, the Court issued the M & O of 5/10/12 finding that the Motion for Sanctions should be granted to the extent that the Motion to Dismiss should be denied and Amica should be awarded its attorneys' fees in bringing the Motion for Sanctions. See M & O of 5/10/12 at 22.

Conclusion

For the reasons stated in the M & O of 5/10/12, I recommend that Mr. Bagnuolo's Motion to Dismiss be denied as a sanction pursuant to Fed. R. Civ. P. 37(b)(2)(A) for his failure to comply with the Order of 2/3/12. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); District of Rhode Island Local Rule Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
May 10, 2012